UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Case No. 09-61250

Otter Tail Ag Enterprises, LLC,

Chapter 11

Debtor.

ORDER (I) APPROVING FORM OF ASSET PURCHASE AGREEMENT AND DESIGNATING STALKING HORSE BID; (II) APPROVING BREAK-UP FEE AND EXPENSE REIMBURSEMENT; (III) APPROVING BIDDING AND AUCTION PROCEDURES; (IV) AUTHORIZING DEBTOR TO CONDUCT AN AUCTION FOR SALE OF ITS ASSETS; (V) AUTHORIZING DEBTOR TO OFFER ASSIGNMENT OF ITS UNEXPRIED EXECUTORY CONTRACTS AND LEASES; (VI) APPROVING FORM AND NOTICE OF SALE; (VII) APPROVING SOLID WASTE AGREEMENT; AND (VIII) SCHEDULING FURTHER SALE HEARING

The motion of above-referenced Debtor seeking an Order: (I) Approving Form of Asset Purchase Agreement and Designating Stalking Horse Bid; (II) Approving Break-Up Fee and Expense Reimbursement; (III) Approving Bidding and Auction Procedures; (IV) Authorizing Debtor to conduct an Auction for Sale of its Assets; (V) Authorizing Debtor to offer Assignment of its Unexpired Executory Contracts and Leases; (VI) Approving Form and Notice of Sale; (VII) Approving Solid Waste Agreement; and (VIII) Scheduling Further Sale Hearing ("Sale Motion") came before the undersigned on January 27, 2011. Appearances were noted on the record.

Based on the Sale Motion, the arguments of counsel, all the files, records and proceedings herein, the Court being advised in the premises, and for those reasons stated orally and recorded in open court following the close of evidence:

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The Court has jurisdiction over the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.[1]

B. The Debtor has articulated good and sufficient reasons for approving the Sale Motion.

C. Due and proper notice of the Sale Motion was provided and no other or further notice need be provided.

D. The process for selection of the Stalking Horse (as defined herein) was fair and appropriate under the circumstances and is in the best interests of the Debtor's estate.

E. The form of the Asset Purchase Agreement (the "APA"), attached as **Exhibit A** to the Sale Motion, is reasonable and is approved solely to the extent of its use as a form which all entities wishing to submit Qualified Bids for the Assets must follow.

F. The Debtor has demonstrated a compelling and sound business justification for authorizing the payment of the Break-Up Fee and the Expense Reimbursement, each as set forth in the APA.

G. The Break-Up Fee and Expense Reimbursement are fair and reasonable and provide a benefit to the Debtor's estate and parties in interest in these cases.

H. The Debtor's obligation to the Stalking Horse (under the conditions and as set forth in the APA) for the Break-Up Fee and Expense Reimbursement: (a) is the result of arm's length negotiations among the parties that were not tainted by self-dealing or manipulation; (b) is reasonably tailored to encourage, rather than hamper, bidding for the Debtor's assets; (c) is an actual

[1] Findings of Fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Bankruptcy Rule 7052.

and necessary cost and expense of preserving the Debtor’s assets, within the meaning of section 503(b) of the Bankruptcy Code; (d) is of substantial and commensurate benefit to the Debtor’s estate; (e) is reasonable and appropriate, in light of the size and nature of the transaction and the substantial efforts that have been and will be expended by the Stalking Horse and the benefits the Stalking Horse is providing to the Debtor’s estate, creditors and all parties in interest; (f) is necessary to ensure that the Stalking Horse will continue to pursue its proposed acquisition of the Acquired Assets; (g) is necessary to establish a bid standard and minimum bid for other bidders and attract additional bidders; and (h) is necessary to maximize the value to the Debtor’s estate.

I. The Break-Up Fee and Expense Reimbursement and the circumstances under which they become payable under the APA were material inducements for and conditions of, the Stalking Horse's entry into the APA.

J. The Bidding Procedures, substantially in the form attached as **Exhibit B** to the Sale Motion, are fair, reasonable, appropriate and represent the best method for maximizing the value of the Debtor's assets.

K. The Stipulation and Agreement for Sale and Liquidation of Assets of Otter Tail AG Enterprises, LLC (the “Solid Waste Agreement”), attached as **Exhibit C** to the Sales Motion, as between the Debtor, U.S. Bank National Association as indenture bond trustee, and Otter Tail County is fair and reasonable and in the best interest of the Estate to consummate a sale of the Debtor’s assets to the Stalking Horse or a subsequent bidder.

L. The entry of this Order is in the best interests of the Debtor and its estate, creditors and interest holders and all other parties in interest herein.

IT IS HEREBY ORDERED:

1. The Sale Motion is granted to the extent set forth herein.

2. The transaction contemplated by that certain Asset Purchase Agreement Pursuant, dated as of January 5, 2011, attached to the Sale Motion as **Exhibit A** among Otter Tail AG Enterprises, LLC, named therein as Sellers and OTAV, LLC (together with any of its affiliates or designees for purposes of consummation of the Asset Purchase Agreement, the "Stalking Horse") is designated as the Stalking Horse Bid.

3. All objections filed in response to the Sale Motion are resolved as set forth herein and to the extent not resolved, are hereby overruled.

4. The Debtor is authorized to conduct an Auction for the sale of all or substantially all of its assets free and clear of all liens, claims, interests and encumbrances, with all such liens, claims, interests and encumbrances to attach to the sale proceeds in the same order and priority as existed at the commencement of the case, subject to a further hearing and final court approval following the Auction (the "Sale").

5. The Debtor is hereby authorized to offer the assignment of unexpired leases and executory contracts and to determine Cure Amounts in connection with the Sale authorized above, subject to further hearing and final court approval of the assignment or assignments (the "Assignment") and to give notice of proposed rejections of unexpired leases and executory contracts.

6. The Bidding Procedures, substantially in the form attached as **Exhibit B** to the Sale Motion, are hereby incorporated herein and approved in their entirety;

7. The Solid Waste Agreement between the Debtor, U.S. Bank National Association, and Otter Tail County, as attached as **Exhibit C**, is approved, and the Final Sale Order and any Chapter 11 Plan shall include terms consistent with the Stipulation.

8. The Notice of Sale, substantially in the form attached as **Exhibit D** to the Sale

Motion, is hereby approved and the Debtor is authorized and directed to serve said Notice of Sale in the manner and upon the parties specified in the Sale Motion.

9. Pursuant to Sections 105, 363, 503 and 507 of the Bankruptcy Code, the Debtor is hereby authorized, empowered and directed to pay an amount equal to the Break-Up Fee or the Expense Reimbursement, as applicable, to the Stalking Horse Bidder in accordance with the terms of the APA and without further order of this Court. The dollar amount of the Break-Up Fee and Expense Reimbursement and the circumstances under which the Break-Up Fee or Expense Reimbursement are payable, as set forth in Section 8.6 of the APA are approved. The Break-Up Fee and Expense Reimbursement shall be allowed as administrative expense claims in each of the Debtor's Chapter 11 Case pursuant to sections 503(b) and 507(a)(2) of the Bankruptcy Code, without further order of the Court. In addition, the right of the Stalking Horse Bidder to receive payment of the Break-Up Fee or Expense Reimbursement, as applicable, to the extent payable under the APA, shall be senior to any other expenses of the Estate.

10. To the extent payable under the APA, the Seller's obligation to pay the Break-Up Fee or Expense Reimbursement, as applicable, shall survive termination of the APA and shall be payable by the Estate.

11. If the Debtor is required pursuant to the terms of the APA to pay the Break-Up Fee or Expense Reimbursement, the Debtor is hereby authorized, empowered and directed to pay such applicable amount (a) from the proceeds of any Alternative Transaction giving rise to the Debtor's obligation to pay the Break-Up Fee, or (b) from the Debtor's available cash or proceeds of the Debtor's assets free and clear of all liens, claims, interests, encumbrances and administrative expenses of any and all of the Debtor's Secured Lenders or otherwise, and (c) to make such payments in accordance with the time frames and other terms and conditions set forth in the APA.

The Debtor's obligation to pay the Break-Up Fee or Expense Reimbursement, as applicable, shall be joint and several, absolute and unconditional and not subject to any defense, claim, counterclaim, offset, recoupment or reduction of any kind whatsoever and shall not be amended, discharged, expunged or released in any respect pursuant to any plan of reorganization for the Debtor.

12. This Court will hold a hearing on or after 1:30 p.m. February 17, 2011 (the "Sale Approval Hearing") to consider final approval of the Sale and Assignment. The Sale Approval Hearing may be adjourned, from time to time, without further notice to creditors or other parties in interest other than by announcement of said adjournment before this Court or on this Court's calendar on the date scheduled for said hearing.

13. Objections, if any, to those aspects of the Sale Motion not approved by this Order, but which will be approved at the Sale Approval Hearing (i.e. approval of the sale, and assumption / rejection of executory contracts) must be in writing and: (a) set forth the name of the objecting party and the nature and amount of any claims or interests held by such party against or in the Debtor's estate or property; (b) state with particularity the legal and factual bases for the objection and specific grounds therefor; (c) in conformance with Local Rule 9006-1(c) and Bankruptcy Rule 9006, must be mailed to the Clerk of the Bankruptcy Court by February 11, 2011, which is the last business day which is at least five days prior to the hearing, and must be mailed to the following counsel of the below-listed parties by that same date: (i) Debtor, to Mackall, Crounse & Moore, PLC, 901 Marquette Avenue, Suite 1400, Minneapolis, MN 55402; FAX: (612) 305-1414, attention to: Timothy D. Moratzka, Esq.; (ii) United States Trustee, to U.S. Trustee's Office, 1015 U.S. Courthouse, 300 South Fourth Street, Minneapolis, 55415; FAX: (612) 664-5516, attention to: Michael Fadlovich, Esq.; (iii) AgStar Financial Services, PCA, to Gray Plant Mooty Mooty Bennett, 1010 West Street Germain, #600, St. Cloud, MN 56301-0966; FAX: (320) 252-

4482, attention to: Phillip L. Kunkel, Esq.; (iv) MMCDC New Markets Fund II, LLC, to Rinke Noonan Ltd., 1015 West Street Germain, #300, St. Cloud, MN 56302-1497; FAX (320) 656-3500, attention to: James L. Wiant, Esq.; (v) U.S. Bank National Association, to Maslon, Edelman, Borman, and Brand, Ltd., 90 South Seventh Street, #3300, Minneapolis, MN 55402-4140; FAX: (612) 672-8397, attention to Clark T. Whitmore, Esq.; (vi) Otter Tail County, to Lindquist & Vennum, PLLP, 80 South Eighth Street, #4200, Minneapolis, MN 55402-2205; FAX: (612) 371-3207, attention to George H. Singer, Esq.

14. The procedures for determining Cure Amounts through the Closing Date of the Sale of the Acquired Assets in accordance with the APA (including amounts of compensation for actual pecuniary loss) and the deadline for objections to the assumption and/or assignment of the Acquired Contracts and Assumed Leases set forth herein are approved.

15. At least twenty (20) days prior to the Sale Approval Hearing, the Debtor shall distribute to non-Debtor parties to any Acquired Contracts, Assumed Leases, Excluded Contracts or Excluded Leases, a list of executory contracts and unexpired leases the Debtor intends to reject or assume and assign to the Stalking Horse in connection with the Sale (the "Initial Contract and Lease Notice"), setting forth including, as to the latter, any Cure Amount necessary to compensate such non-Debtor parties for actual pecuniary loss associated with such Acquired Contract or Assumed Lease.

16. In the event Debtor's proposal regarding rejection or assumption and assignment of leases or contracts changes, whether due to change by the Stalking Horse or a Prevailing Bidder or Back-Up Bidder or for any other reason, Debtor shall promptly give notice of such change to the affected counter-party to the contract or leases (the "Notice of Change"). The Debtor's Notice of Change shall be given at least three days (including weekends and holidays)

prior to the date set for Sale Approval Hearing or any subsequent hearing. In the event of any change in the identity of the assignee after the Auction, such notice shall be given as promptly as possible after the Auction. If the Debtor is unable to give such notice prior to the Sale Approval Hearing, then Debtor shall request at the Sale Approval Hearing that the Court set a hearing to consider any objections to the assumption and assignment or rejection proposed in the Notice of Change, so as to give affected counter-parties such notice.

17. The non-Debtor parties to the Acquired Contracts or Assumed Leases set forth on the Initial Contract and Lease Notice shall have until three days before the Sale Approval Hearing at 4:00 p.m. prevailing Central Time (the "Contract Objection Deadline"), which deadline may be extended by the Debtor, with written consent of Stalking Horse or the Prevailing Bidder, to object to (a) the proposed assumption and assignment of such Acquired Contracts or Assumed Leases in connection with the Sale and/or (b) the proposed Cure Amounts set forth on the Initial Contract and Lease Notice; provided, however, if the Debtor otherwise provides a Notice of Change to a non-Debtor party to an Acquired Contract or Assume Lease, except where such proposed change in treatment was upon mutual agreement of the parties, the non-Debtor party shall have an additional ten (10) days after service of such notice (the "Amended Contract Objection Deadline").

18. Any party objecting to (a) the proposed assumption and assignment of an Acquired Contract or Assumed Lease to which it is a non-Debtor counterparty and/or (b) the proposed Cure Amounts set forth on the Initial Contract and Lease Notice shall be required to file and serve such objection (each, a "Contract Objection"), in writing, setting forth with specificity any and all cure obligations that the objecting party asserts must be cured or satisfied in respect of the applicable Acquired Contract or Assumed Lease and/or all objections to the

potential assumption and assignment of such agreements, together with all documentation supporting such cure claim or objection, so that the objection is received no later than 4:00 p.m. prevailing Central Time on the Contract Objection Deadline or the Amended Contract Objection Deadline, as applicable. If such objection is timely filed, the Bankruptcy Court shall hear any such objection and determine the amount of any disputed Cure Amount or objection to assumption and assignment not settled by the parties at the Sale Hearing or such later date as the Court may deem appropriate. Objections shall be served on the counsel for the following parties: (i) Debtor, to Mackall, Crounse & Moore, PLC, 901 Marquette Avenue, Suite 1400, Minneapolis, MN 55402; FAX: (612) 305-1414, attention to: Timothy D. Moratzka, Esq.; (ii) United States Trustee, to U.S. Trustee's Office, 1015 U.S. Courthouse, 300 South Fourth Street, Minneapolis, 55415; FAX: (612) 664-5516, attention to: Michael Fadlovich, Esq.; (iii) AgStar Financial Services, PCA, to Gray Plant Mooty Mooty Bennett, 1010 West Street Germain, #600, St. Cloud, MN 56301-0966; FAX: (320) 252-4482, attention to: Phillip L. Kunkel, Esq.; (iv) MMCDC New Markets Fund II, LLC, to Rinke Noonan Ltd., 1015 West Street Germain, #300, St. Cloud, MN 56302-1497; FAX (320) 656-3500, attention to: James L. Wiant, Esq.; (v) U.S. Bank National Association, to Maslon, Edelman, Borman, and Brand, Ltd., 90 South Seventh Street, #3300, Minneapolis, MN 55402-4140; FAX: (612) 672-8397, attention to Clark T. Whitmore, Esq.; (vi) Otter Tail County, to Lindquist & Vennum, PLLP, 80 South Eighth Street, #4200, Minneapolis, MN 55402-2205; FAX: (612) 371-3207, attention to George H. Singer, Esq.

19. Notwithstanding the inclusion of an executory contract or unexpired lease on any list of Acquired Contracts and Assumed Leases, the Stalking Horse or Prevailing Bidder, as applicable, shall have authority, in its sole discretion, to remove any contract or lease from the list of Acquired Contracts and Assumed Leases either (i) at any time prior to the Court's entry of

an order approving assumption and assignment of such executory contract or unexpired lease, or (ii) within five (5) business days after the Bankruptcy Court sustains, in whole or in part, such non-Debtor party's objection to either the assumption and assignment or the proposed cure amount; in either such case, the Debtor shall not assume and assign such executory contract or unexpired lease to the party who removed such contract or lease from such list.

20. In the event that no Contract Objection is timely filed with respect to an Acquired Contract or Assumed Lease, the applicable non-Debtor party shall be deemed to consent to the Cure Amount proposed by the Debtor and shall be forever enjoined and barred from seeking an additional amount on account of the Debtor's cure obligations under section 365 of the Bankruptcy Code or otherwise from the Debtor, its estate or the Prevailing Bidder on account of the assumption and assignment of such executory contract or unexpired lease and shall be deemed to have consented to the proposed assignment and assumption. In addition, if no timely Contract Objection is filed, the Prevailing Bidder shall enjoy all the rights and benefits under all Acquired Contracts and Assumed Leases, as applicable, without the necessity of obtaining any party's written consent to the Debtor's assumption and assignment of such rights and benefits, and each such party shall be deemed to have waived any right to object to, contest, condition or otherwise restrict any such assumption and assignment.

21. The Stalking Horse shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to terminate or otherwise enforce any of its rights under the APA in accordance with the terms of the APA. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence and the other provisions of this Order.

22. The Debtor is authorized and empowered to take such steps, expend such sums of

money and do such other things as may be necessary to implement and effect the terms and requirements established under this Order.

23. The Stalking Horse and/or the Prevailing Bidder are hereby deemed to be parties-in-interest under 11 U.S.C. § 1109(b) for purposes of this Sale Motion, the Bidding Procedures, the Auction, the Sale Approval Hearing, any Contract Objection, and any other hearing or matters arising in connection with the APA and the Sale.

24. This Order shall be binding upon and inure to the benefit of the Stalking Horse, Prevailing Bidder and its affiliates, successors and assigns, and the Debtor, including any Chapter 7 or Chapter 11 trustee or other fiduciary appointed for the estate of the Debtor, whether in these cases or subsequent bankruptcy cases or upon dismissal of any of these cases.

25. As provided by Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon its entry.

26. This Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order, including, but not limited to, any matter, claim or dispute arising from or relating to the Break-Up Fee, the Expense Reimbursement, the Bidding Procedures, the Solid Waste Agreement, and the implementation of this Order.

Dated: January 27, 2011

/e/ Dennis D. O'Brien

Dennis D. O'Brien
United States Bankruptcy Judge

NOTICE OF ELECTRONIC ENTRY AND
FILING ORDER OR JUDGMENT
Filed and Docket Entry made on 01/27/2011
Lori Vosejpka, Clerk, By DLR, Deputy Clerk